

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman  
Kate Giard  
Mark K. Johnson  
Anthony A. Price  
Janis W. Wilson

In the Matter of the Petition Filed by Southfork )  
Hydro LLC for an Exemption from Regulation )  
under AS 42.05.711(d) )

U-08-102

ORDER NO. 2

**ORDER APPROVING PETITION FOR EXEMPTION FROM REGULATION  
AND CLOSING DOCKET**

BY THE COMMISSION:

Summary

We grant the petition of Southfork Hydro LLC (Southfork) for exemption from regulation. We close this docket.

Background

Southfork filed a petition for an exemption from the requirements of AS 42.05, in accordance with AS 42.05.711(d).<sup>1</sup> Matanuska Electric Association, Inc. (MEA) filed a response to the Petition.<sup>2</sup>

<sup>1</sup>Letter from P. Janke, filed August 20, 2008 (Petition).

<sup>2</sup>*Petition for Waiver Pursuant to AS 42.05.711(d)*, filed August 29, 2008 (MEA Response), as corrected by *Errata to MEA's Response to Petition for Waiver Pursuant to AS 42.05.711(d)*, filed September 2, 2008.

Discussion

Southfork is single-project company that is developing a small run-of-the-river hydroelectric generation facility within MEA's service territory that is planned to produce less than 5 gigawatt-hours of electricity per year for sale to MEA.<sup>3</sup> Once in operation, Southfork will likely come within the statutory definition of a "public utility" that is subject to regulation by us.<sup>4</sup> The Petition requests that we exempt Southfork from regulation under AS 42.05.711(d):

The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.

The Petition asserts that for a small renewable energy producer like Southfork, regulation is very costly and onerous because its support organizations are

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<sup>3</sup>Petition at 1, MEA Response at 1.

<sup>4</sup>AS 42.05.990(4) provides in part:

"public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for (A) furnishing, by generation, transmission, or distribution, electrical services to the public for consumption.

AS 42.05.990(3) provides in part:

"public" or "general public" means

....

(B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000; and

(C) a utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products that are re-sold to a person or group included in (A) or (B) of this paragraph or that are used to produce the service or commodity sold to the public by the utility.

1 comprised of only a few non-specialist people not proficient with regulation, and that  
2 over-regulation will chill the development of renewable energy. Southfork also states  
3 that it will be indirectly regulated because MEA will need to obtain our approval of its  
4 purchase contract with Southfork.<sup>5</sup>

5 MEA states that it will be the sole purchaser of the output of the Southfork  
6 facility, and because of its location the project will only affect consumers on the MEA  
7 distribution system.<sup>6</sup> MEA agrees that its agreement to purchase the Southfork output  
8 will be subject to our approval under AS 42.05.361(a), so granting the requested  
9 exemption will not result in any increased risks to consumers.<sup>7</sup> The MEA Response  
10 expresses concern that our administrative burden would increase if we went through the  
11 process of issuing certificates of public convenience and necessity to Southfork and  
12 other small distributed generation projects in the MEA service area, resulting in higher  
13 regulatory cost charges to MEA.<sup>8</sup> MEA is also concerned that the distributed generation  
14 projects could have overlapping service territories that would likely cause confusion to  
15 consumers and require additional proceedings before us to resolve.<sup>9</sup> MEA expresses  
16 concern that the Southfork project and other similar projects may not be economical  
17 with the added burden of regulation, and therefore regulation would tend to discourage  
18 these projects.<sup>10</sup> MEA supports the Petition and also urges us to consider adopting  
19 rules that would exempt small generators from regulation.<sup>11</sup>

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21 <sup>5</sup>Petition at 1.

22 <sup>6</sup>MEA Response at 1.

23 <sup>7</sup>*Id.* at 2.

24 <sup>8</sup>*Id.*

25 <sup>9</sup>*Id.* at 3.

26 <sup>10</sup>*Id.*

<sup>11</sup>*Id.*

1           We find that it is in the public interest at this time to exempt Southfork from  
2 regulation. Southfork's sole customer, MEA, is a sophisticated regulated electric utility,  
3 and MEA supports granting the exemption. The purchase and sale agreement between  
4 Southfork and MEA is subject to our approval under AS 42.05.361(a) even if we grant  
5 the exemption to Southfork. So long as Southfork operates only one small distributed  
6 generation project, it will remain a relatively small company for which the expense of  
7 regulatory compliance would be relatively large. Exemption from regulation in  
8 appropriate circumstances may encourage small distributed renewable generation  
9 projects. Finally, if a change circumstances occurs that warrants or requires that we  
10 regulate Southfork, we have the authority to revoke this exemption. For these reasons  
11 we grant Southfork's request for exemption from regulation under AS 42.05.

12 Final Order

13           This order constitutes the final decision in this proceeding. This decision  
14 may be appealed within thirty days of the date of this order in accordance with  
15 AS 22.10.020(d) and the Alaska Rules of Court, Rule of Appellate Procedure  
16 (Ak. R. App. P.) 602(a)(2). In addition to the appellate rights afforded by  
17 AS 22.10.020(d), a party may file a petition for reconsideration as permitted by  
18 3 AAC 48.105. If such a petition is filed, the time period for filing an appeal is then  
19 calculated under Ak. R. App. P. 602(a)(2).

20 Docket Closure

21           With the above determinations, no substantive or procedural matters  
22 remain in this proceeding, and there are no allocable costs under AS 42.05.651 and  
23 3 AAC 48.157. Accordingly, we close this docket.

**ORDER**

THE COMMISSION FURTHER ORDERS:

1. The request for exemption from regulation filed August 17, 2008, by Southfork Hydro LLC is granted.

2. Docket U-08-102 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 9th day of February, 2009.

BY DIRECTION OF THE COMMISSION  
(Commissioners Kate Giard and Anthony A. Price,  
not participating.)

